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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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NOV 8 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Sections 3(n) and
332 of the Communications Act

Regulatory Treatment of Mobile
Services

GEN Docket No. 93-252

To: The Commission

COMMENTS OF PACTEL PAGING

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November 8, 1993

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SUMMARY

PacTel Paging is submitting comments regarding the regulatory treatment to be accorded paging services and narrowband PCS Services.

PacTel submits that regulatory distinctions should not be drawn based upon fine, hypertechnical differences in the manner in which competing services are provided. Broad classifications should be adopted that will stand the test of time.

Two major classes of service should be recognized: narrowband services and wideband services. Within each class, regulatory disparities should be minimized. And, due to the highly competitive nature of the mobile services, the Commission should forbear to the maximum extent permitted by law.

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COMMENTS OF PACTEL PAGING

PacTel Paging ("PacTel"), by its attorneys, hereby submits its comments on the Notice of Proposed Rulemaking (the "Notice") implementing Sections 3(n) and 332 of the Communications Act.^{1/} These comments are limited to addressing issues respecting one-way paging services and narrowband Personal Communications Services ("Narrowband PCS").^{2/} The following is respectfully shown:

^{1/} FCC 93-454, released October 8, 1993.

^{2/} PacTel is a fully separated subsidiary of PacTel Corporation ("PTC"). PTC, which is a leading provider of cellular service and a major proponent of wideband PCS, will be filing separate comments addressing the other wireless service issues raised in the Notice.

I. BACKGROUND

1. PacTel holds numerous Part 22 (public mobile) and Part 90 (private mobile) authorizations for paging stations throughout substantial portions of the United States. Currently, PacTel operates and sells one-way services in California, Washington, Oregon, Arizona, Nevada, Utah, Michigan, Indiana, Missouri, Kansas, Kentucky, Texas, Georgia, and Florida to over one million units in service. By industry estimates, PacTel is the fourth largest paging service provider, and one of the fastest growing paging companies, in the United States.

2. As a major provider of both common carrier and private carrier paging services, PacTel has substantial experience concerning the differing regulatory treatments historically accorded these categories of service, and the practical difficulties that these disparities create. Consequently, in the past PacTel has been a strong advocate of regulatory changes that serve to level the playing field among and between similar services. For example, PacTel has actively supported the relaxation of restrictions on service to individuals in the private carrier paging ("PCP") service and the adoption of procedures to enable PCP operators to earn the exclusive use of their channels.^{3/} These changes serve to make PCP services more competitive with common carrier paging services. Similarly, PacTel has actively supported the

^{3/} See Comments of PacTel Paging in PR Docket No. 93-38 (PCP Service to Individuals) and PR Docket No. 93-35 (PCP Exclusivity).

elimination of federal tariffing requirements for paging common carriers.^{4/} This proposed change will allow common carriers to compete more effectively with PCP operators. Thus, Pactel has a considerable track record in support of regulatory parity.

3. PacTel also is a long time proponent of certain advanced messaging services that are now included under the rubric of Narrowband PCS. In July 1991, PacTel notified the Commission that it intended to begin testing an advanced technology platform called "Advanced Architecture Paging" as part of a broad-based PCS experimentation program that its parent, Pacific Telesis Group, had been authorized to undertake.^{5/} As a result, PacTel has taken an extremely active role in the Narrowband PCS docket and has advocated a regulatory scheme that is flexible and will enable Narrowband PCS providers to compete effectively with others who are providing similar services.^{6/}

4. Based on its standing as a major paging industry participant and strong proponent of narrowband PCS services, PacTel is extremely well qualified to comment on the implementation of the regulatory treatment of these services.

^{4/} See Comments of PacTel Paging in CC Docket No. 93-36.

^{5/} See "Notice of Details of Experimental Program", filed July 29, 1991, with reference to FCC File No. 1934-EX-TC-91.

^{6/} For example, PacTel has consistently advocated dividing the country up into a handful of narrowband PCS regions so that the service territory is comparable to that of the major regional paging systems with which narrowband PCS services are most likely to compete. See Comments of PacTel Paging In Support of Paging Network Petition for Reconsideration filed October 25, 1993 in ET Docket No. 92-100.

II. THE COMMISSION SHOULD ADOPT DEMARCATIONS
THAT WILL STAND THE TEST OF TIME

5. The current mobile regulatory structure is more the result of historical accident than the product of an overarching regulatory design or vision. Common carrier paging services are regulated by the Mobile Services Division of the Common Carrier Bureau; private carrier paging services are regulated by the Land Mobile Division of the Private Radio Bureau. Whatever differences between these services may have existed at their creation, there is now no functional distinction between them.^{7/} The Commission, in reconciling this situation, should be guided by basic principles that will survive the test of time, and thus create a lasting regulatory structure that will foster a competitive environment.

6. In adopting a vision for the future, the Commission should recognize that the one constant element of the telecommunications business is change. The Commission must, therefore, be especially careful not to base its regulatory classifications on aspects of the services that are likely to evolve over time.^{8/} For example, historical distinctions between

^{7/} In the marketplace, most consumers do not know which service is being offered. Both services use the same infrastructure design and equipment and interconnect to the public switched telephone network ("PSTN") in the same fashion. The services offered -- tone, tone-and-voice, digital display, and alphanumeric services -- are identical for each service.

^{8/} It is axiomatic that artificial distinctions hinder competition. For instance, the current differences in
(continued...)

services based upon the categories of eligible customers^{9/}, or the manner in which systems were configured^{10/}, have become obsolete as services and system architectures have advanced over time. If differences in regulatory status are based once again upon temporary conditions^{11/}, the Commission will have to

^{8/}(...continued)

technical rules between private and common carrier 900 MHz paging channels drive up the private carrier paging service provider's costs.

^{9/} One of the original distinctions between private and common carrier services was that the former served narrow classes of eligibles while the latter served the public at large indiscriminately. As the classes of eligible users for private services expanded over time, the basis of these distinctions evaporated.

^{10/} Early efforts to distinguish between the manner in which public and private systems were interconnected with the PSTN became difficult to comprehend as network architectures changed, leading to seemingly artificial distinctions as to whether private carriers were "reselling" telephone interconnect.

^{11/} For this reason, PacTel does not favor basing regulatory treatment upon hypertechnical distinctions between services based upon the current manner in which they are interconnected, or whether they utilize store-and-forward technology, or whether they implement frequency reuse. These are elements of the service that are likely to change over time, recreating artificial distinctions between like services. For example, some of the proponents of various narrowband PCS services have designed systems which utilize cellular reuse. See, e.g., PageMart Personal Information Messaging Service (PIMS), proposed in PP-39; Mtel Nationwide Wireless Network (NWN), proposed in PP-37. Others have proposed digitized voice systems which would be fully interconnected with the PSTN. See Paging Network VoiceNow service, proposed in PP-84. It makes no sense to regulate these system configurations differently if they all provide competing services. Indeed, today, paging systems use a variety of technology which, under the old definition, might change their characterization from interconnected to non-interconnected. For instance, some paging systems require the subscriber to send messages through the system dispatch operator, while others allow fully interconnected service.

undertake another disruptive regulatory reexamination in several years.^{12/}

7. The application of this line of reasoning to paging services compels the conclusion that they be deemed interconnected even if store-and-forward technology is used. Drawing fine distinctions between seemingly similar service offerings based upon the system configuration and hardware would be shortsighted. This is particularly true given the recent allocation in the narrowband proceeding of several 12.5 kHz channels for licensing to existing paging service providers. These "talkback" channels will cause the demarcations between one-way and two-way services to become blurred, and will, no doubt, cause the interconnection arrangements to evolve. By defining paging services as interconnected now, the prospects for a future reclassification are reduced.^{13/}

^{12/} The Commission is to be commended for moving so promptly on the Regulatory Treatment issues after the passage of the Budget Act. There is, however, no way to completely avoid the disruption of existing and proposed services that is caused when there are significant changes in regulation. For example, PacTel understands that the timetable for adopting many of the needed revisions of Part 22 of the rules under consideration in CC Docket No. 92-115 has slipped in part due to the issues of regulatory parity that are involved in this proceeding.

^{13/} Recognizing paging services as interconnected also is appropriate in light of the industry's long campaign for reasonable interconnection arrangements and "co-carrier" status. However, defining paging services as interconnected does not mean that such companies should be obligated to interconnect with other mobile service providers. Paging services are not bottleneck services, and as a result competitive access to paging systems is not necessary or appropriate.

III. TWO GENERAL CATEGORIES
OF MOBILE SERVICE SHOULD BE RECOGNIZED:
NARROWBAND SERVICES AND WIDEBAND SERVICES

8. One element of the telecommunications equation that will, in PacTel's view, show considerable stability over time is the nature of the spectrum that a licensee controls in a particular area. All existing mobile services can be classified relatively easily into one of two major classifications: wideband and narrowband services. Wideband services would include broadband PCS, cellular, and Enhanced Specialized Mobile Radio Services (ESMR). Narrowband services would include paging, Narrowband PCS, and conventional 800 and 900 MHz Specialized Mobile Radio (SMR).

9. The idea of distinguishing between services based upon bandwidth serves to recognize that the amount of spectrum allocated to a service frequently dictates the types of service that will be offered. Ultimately, a mobile service will develop based upon the number of bits of information that can be delivered to the end user per hertz of spectrum. Narrower bandwidths will result in fewer bits per hertz, thus altering the services that can and will be provided. In the final analysis, the Commission can expect services with roughly equivalent bandwidths to develop as competitors in the market.^{14/}

^{14/} For example, the Commission has tentatively concluded that an SMR operator would be better able to implement an ESMR system capable of competing with cellular if allowed to aggregate more channels over a wider area and to implement frequency reuse. See PR Docket No. 93-144.

Consequently, there is an inherent benefit in having such services be subject to common regulatory treatment so that artificial competitive disparities do not arise.

10. The Commission also should alter its traditional frequency-based approach to mobile service regulation. Historically, the Commission allocated each frequency to a specific service with a particular regulatory treatment. The Commission should now separate the licensing of spectrum and technical rules regarding its use from the regulatory treatment of services offered over a particular frequency.

11. In sum, PacTel believes the historical approach to mobile services regulation is not the best model to use for the future. PacTel submits that the Commission should adopt an approach which is in front of the market, as opposed to following the market.^{15/} Accordingly, PacTel recommends that the Commission adopt a new approach that permits licensees the flexibility to offer any service that meets the technical rules for the spectrum, but mandates regulatory treatment based upon the service provided.^{16/} In PacTel's view, the manner in which the Commission proposes to regulate PCS as set forth in paragraph

^{15/} The Commission's existing policy follows, rather than leads, the market. For instance, private and common carrier paging services converged in the market, but the Commission's policies still regarded each of these services as different services.

^{16/} The Commission has in essence done some of this intra-regulatory classification. See, e.g., Cellular Auxiliary Service Offerings, 3 FCC Rcd 7033 (1988). PacTel is merely recommending that the Commission take this approach one step further.

46 of the Notice provides a suitable model for other services as well.^{17/}

IV. PRINCIPLES TO GOVERN NARROWBAND REGULATIONS

12. In designing its new regulatory structure, PacTel submits that there are two overriding principles by which the Commission should be guided. First, like services should be treated similarly. Second, whatever regulatory classification is used, narrowband services should have minimal or no regulation. PacTel will discuss each of these principles separately.

A. LIKE SERVICES SHOULD BE TREATED SIMILARLY

13. One important goal of any regulatory structure is to ensure that it does not result in artificial regulatory distinctions. To that end, the Commission should design its new regulatory structure to ensure that all like services that compete in the market be treated similarly. Such equal treatment is not the case in today's regulatory framework. As mentioned earlier, private carrier paging and common carrier paging directly compete with each other, but are subject to different regulatory treatment. For instance, common carrier paging service providers are subject to state regulation, while private carrier paging service providers are not. In some cases, such as California, common carrier paging service providers are required to file and maintain tariffs with the state public utilities commission. Private carrier paging service providers, on the

^{17/} See also the examples cited in note 67 of the Notice.

other hand, are not required to file tariffs and are permitted to sell their services without price restrictions. This leads to imperfect competition between these services.^{18/}

14. The uniform regulatory scheme should also extend to the technical rules regarding the spectrum. Currently, the two paging services have considerably different technical rules. For instance, common carrier paging licensees are permitted to use up to 3500 watts effective radiated power (ERP) on some transmitters.^{19/} PCP licensees, however, are limited to 1000 watts ERP on all transmitters with height/power limitations similar to common carrier paging licensees. This technical rule disparity disadvantages PCP licensees because the PCP licensees must install more transmitters to cover the same geographic area with the same level of building penetration.^{20/} For these reasons, the Commission should adopt a regulatory structure which treats like services similarly.

^{18/} Although the California PUC has attempted to minimize these imperfections by allowing common carrier paging operators to revise their tariffs on minimal notice, nonetheless the rates charged by such companies are public knowledge. Unlike other states, such as Georgia, which have maximum rate tariffs, California uses specific rate regulation.

^{19/} Indeed, this disparity may increase. The Commission has issued a Notice of Proposed Rulemaking which would allow common carrier paging operators to utilize 3500 watts ERP at all sites. See CC Docket No. 93-116.

^{20/} At least with respect to private services which are now characterized as commercial mobile services, the Omnibus Budget Reconciliation Act of 1993, Pub. Law 103-66, requires that the Commission adopt rules which ensure that like services have similar technical rules. Section 6002(d)(3)(B).

**B. PAGING AND NARROWBAND PCS SHOULD
BE SUBJECT TO NO OR MINIMAL REGULATION**

15. Regardless of the ultimate regulatory classification, the Commission should exercise the discretion given in the Act and forbear to the maximum extent permissible from Title II regulation of paging and Narrowband PCS services because the paging industry is highly competitive. In almost every major metropolitan market, there are three to five well funded carriers competing aggressively on the basis of service, geographic coverage area, and price. Industry surveys show that the price for paging service has fallen dramatically in recent years. Since 1988, the price for digital display service has fallen approximately 32.4%, or from about \$15.69 average revenue per unit ("ARPU") to \$10.60 ARPU.^{21/}

16. The number of competitors and distribution channels have also undergone significant changes. For instance, there has been the emergence of well-funded resellers who compete with the carriers and indirect distribution channels, such as retail stores. All of these changes have resulted in a highly competitive industry with numerous, financially strong service providers. Thus, as tentatively concluded in the Notice, the statutory prerequisites to forbearance are met.^{22/}

17. PacTel is certain that Narrowband PCS and the other narrowband services also will be highly competitive. As

^{21/} See Paging Leadership Association, Inc., Paging Industry Benchmark Ratio Study (Phase Nine Report, March 1993).

^{22/} Notice, para. 62.

mentioned above, Narrowband PCS and other narrowband services will be direct competitors to existing and future paging services. Thus, Narrowband PCS service providers will face five to six existing well-financed competitors from existing paging carriers alone. Accordingly, PacTel recommends that the Commission forbear from as much Title II regulation of narrowband services as possible.

18. The removal of federal tariff requirements from paging, mobile telephone service, cellular and PCS providers is particularly important. As PacTel has indicated in other proceedings^{23/}, the court decision overturning the Commission's permissive detariffing of nondominant carriers worked a particular hardship on radio common carriers who, for the most part, have not filed tariffs for nearly twenty years. Now that the Congress has empowered the Commission to detariff competitive services, the Commission should act promptly to do so.

^{23/} See PacTel Paging Request for Declaratory Ruling, File No. DA 93-400, filed March 24, 1993; Comments of PacTel Paging in CC Docket No. 93-36.

V. CONCLUSION

19. The foregoing premises having been duly considered, PacTel respectfully requests that the Commission expeditiously adopt revised rules reflecting PacTel's comments.

Respectfully submitted,

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November 8, 1993

CERTIFICATE OF SERVICE

I, Tana Christine Maples, hereby certify that I have this 8th day of November, 1993, caused copies of the foregoing **Comments of Pactel Paging** to be delivered by hand, courier charges prepaid, to the following:

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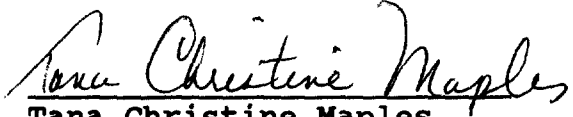
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